

Community Legal Services' Employment Unit represents hundreds of low-wage workers each year who face discrimination, wage theft, sick leave violations, and retaliation from employers. Many of these problems are exacerbated by misclassification, which deprives workers of the legal protections against these workplace abuses. We see misclassification in a wide variety of different industries. It's common in construction work, but misclassification is not limited to the construction industry. The low-wage workers we represent are misclassified while working in home health care, retail, transportation, mental health services, or even restaurants. Many of our clients are immigrant workers, and their fear of retaliation for reporting workplace abuses makes it easier for employers to misclassify them and violate their employment rights.

For example, we represented a worker who was hired by a cleaning company to clean different residential and commercial properties in Philadelphia. When she was hired, she was made to sign an independent contractor agreement. The owner of the cleaning company supplied all the cleaning supplies, set her rigid work schedule, telling her where to go and when, reviewed her work (often going to the work sites with her to do so), and paid her \$9/hour. She had to travel between different buildings multiple times each day, but she was not paid for the time traveling between worksites—which would've been compensable time if she were an employee. She also was not paid any overtime.

Workers like our client are not independent contractors and should not have to fight to get the wages they have earned. The many misclassified workers we represent do not own their own businesses. They do not provide the materials or tools needed to perform their work. They have little to no control over their hours and job duties, and their work is closely supervised. In other words, their employers control almost every aspect of their work—the hallmark of an employer-employee relationship—but often violate the legal rights that are supposed to come with that relationship. As a result, our clients are often paid flat daily or weekly rates, with no overtime, despite working long hours every week. They are often forced to work extra, unpaid hours or are not paid for compensable travel time. They are discriminated against and harassed and told to find other work if they don't like it. If they are fired for complaining about wage theft or working conditions, they are not protected by anti-retaliation laws, and have no access to unemployment compensation because their employers have not been paying into the system, which makes it even more difficult for workers to risk losing their jobs if they stand up for their rights. Even on the front end, misclassified workers are not protected by the federal, state, and local laws that prohibit criminal record discrimination in the hiring process, so it makes it more difficult for many people to find work in the first place. And most low-wage workers in Pennsylvania do not have access to the legal services needed to fight misclassification under our current system.

At CLS we've seen how pervasive and harmful worker misclassification is in Pennsylvania, especially for low-wage workers. We need broader policy changes to deal with this problem. We are supportive of the recommendations released by the Worker Misclassification Task Force in 2022, and especially recommend adopting clear legal tests to distinguish between employees and independent contractors, such as the ABC test, which is already in place in several other states. Creating a clear test that puts the burden on employers to show that a worker is truly an independent contractor would make it easier for workers to stand up for their rights without the need for complex legal arguments. We are also supportive of increasing the capacity of the Department of Labor & Industry to investigate and enforce misclassification violations.

--David Huang, Staff Attorney in the Employment Unit at Community Legal Services